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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric  
Administration****50 CFR Part 227****[Docket No. 41264-4164]****Threatened Fish and Wildlife;  
Guadalupe Fur Seal****AGENCY:** National Marine Fisheries  
Service (NMFS), NOAA, Commerce.**ACTION:** Proposed rule.

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**SUMMARY:** On November 21, 1983, the NMFS received a petition to list the Guadalupe fur seal as an endangered species under the Endangered Species Act of 1973 (ESA). On February 8, 1984, notice was published in the **Federal Register** that the petition presented substantial information indicating the petitioned action may be warranted. A status review was conducted to determine if the petitioned action is warranted. Based on the low abundance of this species primarily due to 19th century commercial exploitation and a slow but persistent increase in population size over the past 30 years, the NMFS has determined that listing the Guadalupe fur seal as a threatened species is warranted and, therefore, issues this proposed rule and requests comments. The intended effect is to provide the Guadalupe fur seal with the protection afforded threatened species.

**DATE:** Comments on the status review and the proposed rule must be received by March 4, 1985. Any request for a public hearing must be received by February 19, 1985.

**ADDRESS:** Richard B. Roe, Director, Office of Protected Species and Habitat Conservation, NMFS, NOAA, U.S. Department of Commerce, Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Montanio, Office of Protected Species and Habitat Conservation, NMFS, Washington, D.C. 20235 ((202) 634-7471) or Mr. Dana J. Seagars, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731 ((213) 548-2518).

**SUPPLEMENTARY INFORMATION:**

**Background**

A petition submitted to the NMFS from the Center for Environmental Education, Seal Rescue Fund (CEE/SRF, 1983) states that the Guadalupe fur seal (*Arctocephalus townsendi*) should be listed as endangered under the ESA (16 U.S.C. 1531) for the following reasons:

1. Overutilization of the species by 19th century commercial sealing operations reduced the population to extremely low numbers.
2. Population growth has been slow since a breeding colony was discovered at Guadalupe Island, Mexico in 1954.
3. The restricted breeding area and overall distribution increases the vulnerability of Guadalupe fur seals to human disturbance through direct or indirect intrusion into these areas. Disruption of normal activities at both breeding and hauling out areas could adversely affect population growth.
4. *A. townsendi* is listed on Appendix I of the Convention on International Trade in Endangered Species (CITES). Such listed species are considered by CITES to be threatened with extinction; trade in the species or its products for commercial purposes is banned by Convention members.
5. The IUCN Red Data Book lists *A. townsendi* as vulnerable.
6. *A. townsendi* was listed pursuant to the Endangered Species Protection Act of 1966 as threatened with extinction. The omission of this species from a revised list published in 1970 (and subsequent lists) was without explanation.

The petition was reviewed by NMFS marine mammal biologists and managers as well as other personnel having knowledge and expertise concerning the Guadalupe fur seal. Based on these reviews, the Assistant Administrator for Fisheries, NMFS, determined that the petitioner presented

substantial information indicating that the petitioned listing of *A. townsendi* may be warranted. As required by the ESA and its regulations at 50 CFR Part 424, the NMFS conducted a review of the species status to determine whether or not it should be listed under the ESA (49 FR 4804; February 8, 1984). Information and comments received in response to the Federal Register Notice were considered in developing the status review.

**Summary of Status Review**

The Guadalupe fur seal was first described by Merriam (1897) from skulls collected on Guadalupe Island by C.H. Townsend. Disputes over the taxonomic status of the species were largely resolved by Repenning *et al.* (1971). Most investigators now accept the Guadalupe fur seal as a distinct species, *Arctocephalus townsendi*, the only member of the genus to reside in the northern hemisphere (King, 1983).

The Guadalupe fur seal is a small to medium sized (50-160 kg.) otariid (Fleischer, 1978). *A. townsendi* relies on a thick layer of fur for insulation from the cold surrounding marine environment; any soiling of the pelage layer is likely to result in physiological stress. Guadalupe fur seals come ashore to pup and breed during May-August; a single pup is produced per female. Virtually nothing is known about natality and mortality rates, food and feeding distribution, or genetics.

The distribution of Guadalupe fur seals prior to their exploitation is not well known. However, based on analyses of skeletal material exhumed from coastal middens of native Americans and sketchy accounts from early California explorers and sealers, the species may have ranged approximately from 18°N (Revillagigedo Islands—located about 300 miles south of Baja California, Mexico) to 37°N (Monterey Bay, CA). Breeding likely occurred in the California Channel Islands from San Miguel Island (Walker and Craig, 1978; Lyon, 1937) south to Guadalupe, the San Benitos and Cedros Islands, and perhaps as far south as Socorro Island (one of the Revillagigedo Islands). Although some have speculated that *A. townsendi* formerly occurred with abundance as far north as the Farallon Islands, CA (38°N), the evidence examined to date does not support this hypothesis.

Guadalupe fur seals are known to breed currently only on the eastern shore of Guadalupe Island (Peterson *et al.*, 1968; Fleischer, 1978; Pierson, 1978). A few non-breeding individuals have been observed hauled out at Pt. Bennett, San Miguel Island each year since 1969

during the breeding season; other individuals have been reported from San Nicolas and San Clemente Islands and a few widely scattered pelagic locations. Estimates of pre-exploitation population size range from 20,000 (Fleischer, 1978) to 200,000 animals (Hubbs, 1979). As the literature is grossly inadequate with regard to pre-exploitation levels, a sound estimate of the pre-exploitation population size cannot be made. However, it is likely that at the minimum the pre-exploitation population included at least 30,000 fur seals, based both on the size of the assumed habitat (accommodating 20,000 at Guadalupe Island and 10,000 elsewhere) and on the large numbers reported to be taken by 19th century sealing vessels.

During the early to mid-19th century, the islands off California and Mexico were visited frequently by fur sealers of various nationalities. The commercial hunting of the Guadalupe fur seal ended with its presumed extinction, even before it was scientifically described in 1897. The species was presumed extinct until 1926 when a small group was found and two individuals were collected from Guadalupe Island and delivered to the San Diego Zoo in 1928 (Townsend, 1928). It was again presumed extinct after the collector reportedly returned to the island and exterminated the remaining animals. The discovery of an adult male on San Nicolas Island in 1949 (Bartholomew, 1950) prompted several searches, resulting in the discovery of a herd of 14 animals on Guadalupe Island in 1954 (Hubbs, 1956 a, b). Since that time, sporadic expeditions have been made to census the population. Although there are considerable limitations associated with the survey techniques employed throughout recent years, the data indicate that the population is growing. Fleischer (1978) counted 1,073 animals at Guadalupe Island in 1977. A thorough foot census of the east side of Guadalupe Island conducted jointly by Mexican and U.S. scientists counted 1,597 *A. townsendi* in early August 1984. There is no indication that *A. townsendi* occurs in any abundance throughout the remainder of its historic range. Therefore, the 1984 count of about 1,600 animals is the best available scientific data and can be used as a valid estimate of the current minimum population size.

Additional detailed information may be obtained from the petition (CEE/SRF, 1983), the NMFS Status Review (Seagars, 1984), and other references cited at the end of this document.

### Listing Procedures

Section 4(a) of the ESA provides that the Secretary of the Interior or Commerce, depending upon the species involved, shall, by regulation, determine if any species is endangered or threatened based upon any one or a combination of the following factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; (5) or other natural or manmade factors affecting its continued existence. Section 4(b) of the ESA requires that such determinations are to be made "solely on the basis of the best scientific and commercial data available" and must take into account any efforts being made to protect the species under consideration. The factors and their relation to *A. townsendi* are discussed below.

(1) *The present or threatened destruction, modification or curtailment of the species habitat or range.* Habitat loss has not been the primary factor causing the reduced abundance of this species. However, actions that have been proposed within the species' range have the potential to modify or curtail portions of the habitat or range. Offshore oil and gas development activities are intensifying in central and southern California waters. Oil spills could affect individual fur seals in their pelagic habitat or on haulout areas at San Miguel and San Nicolas Islands. As fur seals rely on their thick pelage for insulation from the cold marine environment, contact with oil either at sea or on a haulout could adversely affect individual fur seals. Although the habitat in the Channel Islands area has a history of low level, chronic occurrence of oil from natural seeps in the vicinity, larger scale, or catastrophic oil spill events are not a typical component of the habitat.

The U.S. Air Force's Space Shuttle Program proposes to launch and return vehicles over the northern Channel Islands during the 1980's and 1990's. Over the ten year life of the program, a maximum of 7 launches are predicted to cause high intensity sonic booms over the northern Channel Islands, San Miguel Island in particular. The effects of these sonic booms are unknown at the present time. High intensity sonic booms are not a normal component of the habitat. Sonic booms of a lesser intensity may impact the islands from approximately 73 other launches and all returns. Any of these sonic booms could

cause short-term disturbance to any individuals present.

These activities, particularly those with a potential for oil spills or high-intensity sonic booms, may adversely affect Guadalupe fur seals off Southern California. However, they are not likely to pose a threat to the continued existence of the population breeding on Guadalupe Island.

(2) *Overutilization for commercial, scientific, and educational purposes.* The original population size probably included at least 30,000 individuals. Commercial hunting for the fur of this species resulted in overutilization and its nearly complete eradication in the mid to late 19th century. Archeologic and historic evidence indicates that the species' former breeding range probably was from San Miguel Island, California, to Socorro Island, Baja California. Two specimens were collected for scientific and educational purposes in 1928 when it was unlikely that the population exceeded 60 individuals. Shortly after this time, all known remaining animals reportedly were harvested for furs sold in Panama. The current breeding distribution is likely restricted to the eastern shore of Guadalupe Island, this area is used by at least 1,600 animals. The long-term population growth rate most likely has been influenced by the repeated reductions in numbers, reduced genetic variability, or other unknown factors.

(3) *Disease or predation.* There is no information concerning disease or predation for this species.

(4) *Inadequacy of existing regulatory mechanisms.* Current regulatory mechanisms appear to be providing adequate protection of the species within areas subject to Mexican and U.S. jurisdiction. The Guadalupe fur seal has been protected under the provisions of the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361) since December 21, 1972. It is also listed on Appendix I to the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) which prohibits trade for commercial purposes between signatory parties to the Convention. Although Mexico is not a party to the Convention, these prohibitions apply to trade with signatory nations. Listing of the Guadalupe fur seal pursuant to the ESA would provide it with additional protection through the section 7 consultation process.

(5) *Other natural or manmade factors affecting its continued existence.* The recent levels of human activities around Guadalupe Island have not prevented the continued increase in the population, and there is no evidence that human

activities are increasing to levels that will halt the population's growth or threaten its continued existence. However, a potential exists for the expansion of several fisheries into waters adjacent to Guadalupe Island or the (as yet unknown) feeding grounds of *A. townsendi*. This could result in competition for food resources or the incidental taking of seals.

### Discussion

#### Listing decision

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; a threatened species is any species that is likely to become an endangered species within the foreseeable future. The ESA requires that a determination to list a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species relative to the criteria reviewed above. Of these, a decision to list *A. townsendi* is best supported by evidence presented according to criterion (2)—

"overutilization for commercial . . . purposes." However, the species is not currently being taken for commercial purposes and is protected from such taking by both Mexican and U.S. law. Therefore, given the apparent persistence of the species over the past 40 years and continued growth of the population, the NMFS does not find that the species is in danger of extinction throughout all or a significant portion of its range. However, despite the shortcomings of the available scientific data base, it is apparent that the population was reduced to and remains at a level where the species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus the NMFS considers that listing this species as "threatened" under the provisions of the ESA is appropriate.

Therefore, the NMFS proposes to list *A. townsendi* as a threatened species under the ESA. The list of threatened species under the jurisdiction of the NMFS, Department of Commerce, is contained in 50 CFR 227.4. If a final determination that *A. townsendi* is a threatened species is made, the NMFS will inform the Department of the Interior, which will add the species to the U.S. "List of Endangered and Threatened Wildlife" (50 CFR Part 17) as required by section 4(a)(2) of the ESA.

### Delisting Criteria

The goal of the ESA is to provide for the recovery of listed populations to a point at which the protective measures of the ESA are no longer necessary. A species may be delisted on the basis of recovery if, after a review of the species status, it is determined that the species is neither endangered nor threatened (50 CFR 424.11(d)). Recovery of a listed population is judged relative to the general listing criteria (50 CFR 424.11(c)). For example, a population that was listed because of habitat degradation could be delisted when the habitat is restored and the population stabilized, or a population that was listed because of overutilization could be delisted when the use is curtailed and the population returns to a safe level.

The general criteria (50 CFR 424.11(c)) are vague, as they are designed to apply to a broad range of species and situations. This makes evaluating the recovery of a species difficult and contributes to making the delisting process cumbersome. Therefore, the NMFS is proposing specific criteria for the Guadalupe fur seal that can be evaluated with data from a long term monitoring program. Each of the criteria proposed can be evaluated independently. When one or more of the criteria is attained, the NMFS would initiate a status review to determine whether the Guadalupe fur seal should be delisted.

The specific criteria proposed are: (1) Growth to a population size of 30,000 animals, (2) establishment of one or more additional rookeries within the historical range, and (3) growth to the level at which maximum net productivity of the population occurs. The estimated minimum size of the pre-exploitation population is 30,000 animals (Seagars, 1984). The NMFS believes this would be a reasonable indication of recovery from the effects of exploitation that occurred during the last century.

The establishment of additional breeding colonies within the historic range provides an indication of recovery, because it implies population growth. Establishment of a geographically isolated breeding site reduces the potential for adverse effects on a population due to a localized catastrophic event or human interactions, thereby diminishing the need for the protective measures of the ESA. Therefore, the NMFS proposes to use the establishment of one or more additional rookeries within the historical breeding range as a criterion for measuring recovery.

The maximum net productivity level (MNPL) is as definitive point in the

dynamics of a recovering population. The growth rate of the population begins to decrease at the MNPL as density dependent factors begin to operate. A qualitative determination that a population has passed the point at which the MNPL occurs can be made by monitoring the rate of population growth over time. A population above its MNPL is resilient and can respond to reductions (e.g. from an incidental take) by increasing productivity. This resiliency provides some protection to the population, and may indicate that the protective measures of the ESA are not necessary. Therefore, NMFS proposes to establish the MNPL of the Guadalupe fur seal population as a criterion for assessing recovery. If the NMFS long-term population monitoring program indicates that the population is above its MNPL, the NMFS will initiate a status review.

The NMFS thinks that establishing specific criteria for assessing the recovery of a population at the time it is listed will facilitate monitoring the recovery of the population and make the delisting process, if warranted, less cumbersome. However, meeting one or all of the delisting criteria does not mean that the NMFS will propose delisting the species, but rather that the NMFS will conduct a status review. If, based on the status review, the NMFS determines that the species is neither threatened nor endangered, then it will propose to delist the species.

### Critical Habitat

Critical habitat is defined as "the specific areas within the geographical area occupied by the species . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection" and "specific areas outside the geographical area occupied by the species . . . upon a determination . . . that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). The 1982 amendments to the ESA provide, in section 4(a)(3), that the Secretary shall designate critical habitat, to the maximum extent prudent and determinable, concurrent with listing a species as endangered or threatened. The criteria for designating critical habitat are set forth in § 424.12 of the regulations which implement section 4 of the ESA (50 CFR Part 424; 49 FR 38900; October 1, 1984). Those regulations state that "Critical Habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction" (50 CFR 424.12(h)).

Guadalupe fur seals are known currently to breed only on Guadalupe Island in Mexico. Food habits have not been studied and foraging habitat has not been defined. A few non-breeding individuals have been observed on San Miguel Island each year since 1969 during the breeding season; and, individuals have been sighted sporadically at San Nicolas and San Clemente Islands and few widely scattered pelagic locations. However, these areas are not known to be used for activities essential to the conservation of the species and are occupied only by a very small number of non-breeding individuals.

The NMFS finds that currently the only areas that meet the definition for critical habitat are outside of U.S. jurisdiction. Therefore, no critical habitat designation is being proposed. If information indicates that any area within the U.S. is essential to the conservation of the species and may require special management considerations or protection, the NMFS will then consider a critical habitat designation. For example, if the breeding habitat in Mexico is degraded by environmental change or an increase in human activities, if *A. townsendi* begins to breed or pup on the California Channel Islands, or if important foraging habitat is identified, then the NMFS will determine if critical habitat should be designated.

### Research

Under the authority of Section 108 of the MMPA, the NMFS has informally cooperated with the Government of Mexico in marine mammal scientific research programs that can be continued or expanded. A cooperative research program with the Government of Mexico would facilitate research into various aspects of population dynamics and life history of the Guadalupe fur seal through cooperation in funding, personnel, and shared expertise. This information would provide a sound basis for management throughout the species range. These projects may include: A review of historical sealing records (logbooks); periodic surveys designed to assess the population status throughout the range of the species on a consistently repeatable basis; description of natality and mortality rates; identification of food habits and distribution of feeding grounds; development of models used to assess population trends and status; and the monitoring of potential actions which could adversely affect the population—such as disturbance of fishery interactions.

### Technical Amendment

Section 227.71 of Subpart D—Threatened Marine Reptiles is also proposed to be amended to clarify that this section applies only to threatened species of sea turtles. Section 227.71 refers to all threatened species enumerated in § 227.4, which at this time includes only sea turtles. Therefore, this is not a substantive change.

### Comments Requested

The NMFS is soliciting information and comments on this proposed rule. In making a final determination concerning the listing of *A. townsendi*, the NMFS will take into account the data, views, and comments received during the comment period.

### Classification

The NOAA Directives Manual 02-10 (49 FR 29644-29657; July 23, 1984) implementing the National Environmental Policy Act (NEPA), categorically exclude listing actions under section 4(a) of the ESA from the environmental assessment and environmental impact statement requirements of NEPA.

As noted in the Conference report on the 1982 amendment to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act, are not applicable to the listing process.

### References

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### List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife, Exports, Fish, Import, Marine mammals, Transportation.

Dated: December 21, 1984.

**Carmen Blodin,**  
Deputy Assistant Administrator for Fishery Resource Management.

For the reasons set out in the preamble, Part 227 of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation to Part 227 reads as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.4 of Subpart A is amended by adding a new paragraph (d) to read as follows:

#### § 227.4 Enumeration of threatened species.

\* \* \* \* \*

(d) Guadalupe fur seal (*Arctocephalus townsendi*).

3. A new Subpart B is added to read as follows:

### Subpart B—Threatened Marine Mammals

#### § 227.11 Guadalupe fur seal.

(a) *Prohibitions.* The prohibitions of Section 9 of the Act (16 U.S.C. 1538) relating to endangered species shall apply to the Guadalupe fur seal except as provided in § 227.11(b).

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under § 227.11(a) in accordance with and subject to the provisions of Part 222 Subpart C—Endangered Fish or Wildlife Permits.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a Guadalupe fur seal without a permit if such taking:

(i) Is accomplished in a humane manner;

(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to insure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

(3) Any animal or specimen taken under paragraph (2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Regional Director.

4. Section 227.71 of Subpart D is amended by revising the first sentence to read as follows:

#### § 227.71 Prohibitions.

Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed in any of the following acts with respect to any species of threatened marine reptile enumerated in § 227.4:

\* \* \* \* \*

[FR Doc. 85-55 Filed 1-2-85; 8:45 am]

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